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No. 08-1350

IN THE
SUPREME COURT OF THE UNITED STATES

DORA SCHRIRO, Director,
ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.,
Petitioners,

vs.

JAMES LYNN STYERS,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit

**BRIEF IN OPPOSITION TO
PETITIONER'S WRIT OF CERTIORARI**

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*Cary Sandman [AZ SB #004779]
WATERFALL, ECONOMIDIS, CALDWELL,
HANSHAW & VILLAMANA, P.C.
5210 E. Williams Circle, Suite 800
Tucson, AZ 85711
(520)790-5828/(520)745-1279 (facsimile)

Amy Beth Krauss [AZ SB #013916]
P.O. Box 65126
Tucson, AZ 85728
(520) 400-6170

*Counsel of Record

CAPITAL CASE

Respondent's Counter Statement of Question Presented

On direct appeal of Styers' death sentence, the Arizona Supreme Court struck an invalid aggravating circumstance, reweighed the remaining aggravating circumstances against mitigating evidence, and affirmed. While the state court remarked that it had "considered all of the proffered mitigation," it also made clear that one category of evidence – proof of Post-Traumatic Stress Disorder (PTSD) caused by Petitioner's Vietnam combat experience – did not "constitute mitigation" at all because the experts "could not connect" that evidence to the capital offense. Accepting the Arizona Supreme Court's own plain statement that the PTSD evidence could not be regarded as "mitigation" because it lacked the requisite nexus, and recognizing that the resulting exclusion of this evidence from the reweighing process contravened this Court's decisions in *Eddings v. Oklahoma*, 455 U.S. 115 (1982), and *Clemons v. Mississippi*, 494 U.S. 738 (1990), the Ninth Circuit held that the state court's decision was contrary to clearly established federal law.

The following question is presented:

> When the basis of a state court's decision, as plainly stated in its opinion, is irreconcilable with rules laid down by this Court, is it appropriate for a federal habeas court to hold that the state court's decision was contrary to clearly established federal law?

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RESPONDENT'S STATEMENT OF THE CASE

During his capital sentencing proceedings, Respondent Styers presented undisputed mitigation evidence which demonstrated that he suffered from a long-standing severe mental illness, as well as neurological impairments resulting from a severe head injury. The evidence showed that in 1967, at age 19, Styers volunteered for service in the United States Marine Corps, where he served honorably in at least twelve different major combat operations in the Vietnam theater during 1968-1969. Shortly after leaving the field of combat, and continuing through the time of his arrest for the instant offense, Styers suffered from symptoms of post-traumatic stress disorder ("PTSD"). Consequent to his illness, Styers endured auditory, visual and tactile hallucinations typically associated with an active psychosis. Styers sought help from the Veterans Administration, but the treatment he received was not successful; he could not maintain employment, and he continually suffered from symptoms of PTSD, including depression, anxiety, and psychosis. Preceding and through the time of his arrest for the subject offense, Styers was treated with a combination of drugs, including Navane and Lithium.[1] The record also showed that

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[1]Lithium is administered to control mania associated with manic-depressive illness and bi-polar disorder, and Navane is a potent anti-psychotic used in the treatment of schizophrenia and psychosis. See Physicians Desk Reference, 50th Ed. at 2201-2202, 2485 (1996).

Styers' psychiatric difficulties were compounded by a traumatic and disabling head injury sustained when he fell from a moving military vehicle and suffered a right occipital skull fracture and a cerebral contusion. As a result of these injuries, Styers was declared permanently disabled and discharged from the military. The record showed that these head injuries left Styers brain damaged, with seizure activity, and organic brain syndrome with mixed features.

On direct review of Styers' death sentence, the Arizona Supreme Court struck one of the aggravating circumstances relied upon by the trial court, and later reweighed the remaining aggravating and mitigating circumstances as required by this Court's decisions. *State v. Styers*, 865 P.2d 765, 778 (Ariz. 1993). Before conducting the reweighing, the state court identified Styers' lack of prior convictions and his honorable military service as "relevant mitigating circumstances."[2] *Id.* at 777. The court then observed that,

> [Styers] also suffered from post-traumatic stress disorder prior to and around the time of the murder as a result of his combat service in Vietnam. This *could* also, *in an appropriate case*, constitute mitigation. ... *However*, two doctors who examined defendant could not connect [Styers'] condition to his behavior at the time of the conspiracy and the murder.

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[2]The state court never mentioned Styers' documented neurological impairments and brain damage in its decision.

Id. at 777 (emphasis added). Finally, in a subsequent section of its opinion, entitled "INDEPENDENT REVIEW," the court stated that it had "considered all of the proffered mitigation and, like the trial court, f[ou]nd it [wa]s not sufficiently substantial to warrant leniency." *Id.* at 778.

After exhausting his state post-conviction remedies, Styers petitioned for a writ of habeas corpus in the district court of Arizona. There Styers alleged that the Arizona Supreme Court's decision affirming his sentence was made contrary to this Court's holding in *Clemons v. Mississippi*, 494 U.S. 738 (1990) (when a sentence rests on an invalid aggravating factor, "only constitutional harmless-error analysis or reweighing at the trial or appellate level suffices to guarantee that the defendant received an individualized sentence"). The district court dismissed Styers' *Clemons* claim on the ground that it had not been exhausted in the state court proceedings. Styers filed a timely appeal to the Ninth Circuit Court of Appeals.

After finding that Styers' *Clemons* claim had been exhausted in the State court proceedings,[3] the Ninth Circuit determined that although the Arizona Supreme Court stated that it had "considered all of the proffered mitigation," it was evident from the plain language of the state court's opinion that its causal nexus requirement had

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[3]Petitioner has not challenged the Ninth Circuit's exhaustion determination before this Court.

resulted in the exclusion of constitutionally relevant evidence from what the state court regarded as "all" of the "mitigation." Citing this Court's decision in *Eddings v. Oklahoma*, 455 U.S. 105, 114-15 (1982), the Ninth Circuit panel recognized that while the state court was free to determine the weight to be given relevant mitigating evidence, it was not at liberty to apply an unconstitutional standard to exclude relevant mitigation from the weighing calculus altogether. *Styers v. Schriro*, 547 F.3d 1026, 1035-36 (9th Cir. 2008). The panel further observed that in *Smith v. Texas*, 543 U.S. 37 (2004), this Court had rejected the use of a nexus requirement for identifying relevant mitigation that was materially indistinguishable from the test employed by the Arizona Supreme Court in Styers' case. *Id.* at 547 F.3d 1035.[4]

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[4]The Ninth Circuit panel vacated the district court's judgment, denying the writ of habeas corpus with instructions to grant the writ with respect to Styers' sentence, "unless the state . . . either corrects the constitutional error in petitioner's death sentence or vacates the sentence and imposes a lesser sentence consistent with law." *Id.* at 547 F.3d 1036.

REASONS WHY THE WRIT SHOULD BE DENIED

I. PETITIONER'S FIRST QUESTION PRESENTED RESTS ON A FUNDAMENTALLY FLAWED PREMISE: THAT THE NINTH CIRCUIT SHOULD HAVE APPLIED 28 U.S.C. § 2254(e)(1) TO THE STATE COURT'S CHARACTERIZATION OF ITS OWN ANALYSIS.

The premise of Petitioner's first Question Presented is that the court of appeals was obligated to apply the § 2254(e)(1) presumption of correctness to the Arizona Supreme Court's statement that it had "considered all of the proffered mitigation ...." (Petition at 11.) Acceptance of this premise would require an unprecedented expansion of the reach of the statutory presumption of correctness. As this Court explained in *Thompson v. Keohane*, 516 U.S. 99 (1995), the statutory presumption of correctness applies only to "'basic, primary, or historical facts: facts "in the sense of a recital of external events and the credibility of their narrators...."'" *Thompson*, 516 U.S. at 110 (quoting *Townsend v. Sain*, 372 U.S. 293, 309 n. 6 (1963) (quoting in turn *Brown v. Allen*, 344 U.S. 443, 506 (1953))). Petitioner neither acknowledges the sweeping change it seeks, nor offers any justification for such a departure from this Court's settled precedents.

What is more, standing alone, the Arizona Supreme Court's statement that it considered Styers' proffered mitigation is all but irrelevant to the question properly asked and answered by the court of appeals: whether the state court applied an

unconstitutional causation/nexus test to exclude relevant mitigation from its weighing calculus. If the state court applied such an unconstitutional test for qualifying mitigation (as the Ninth Circuit correctly determined it did), then the state court decision was contrary to this Court's clearly established precedents within the meaning of 28 U.S.C. § 2254(d)(1).[5] *Eddings v. Oklahoma; supra* (evidence of defendant's personality disorder was constitutionally relevant mitigation despite the fact that it did not provide a legal excuse for the offense); *Smith v. Texas*, 543 U.S. 37, 44-45 (2004) (holding that the state appellate court's nexus to the crime screening test for the identification of relevant mitigation evidence was plainly constitutionally inadequate under the Court's Eighth Amendment precedents).

Subsection 2254(e)(1), provides that "a determination of a factual issue made by a State court shall be presumed to be correct and the applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." This subsection of the statute applies to challenges made to a state court's determination of historical fact; it does not apply (and this Court has never held subsection (e)(1) to apply) to a state court's own legal analysis. The Arizona

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[5]A" state court decision will . . . be contrary to [this Court's] clearly established precedent if the state court applies a rule that contradicts the governing law set forth in [this Court's] cases." *Terry Williams v. Taylor*, 529 U.S. 362, 405 (2000).

Supreme Court's legal analysis dwells in its evaluation of Styers' mental illness and whether that evidence could qualify as mitigation. The state court plainly held such evidence could not qualify as mitigation because it lacked an explanatory nexus to the offense. Ignoring that holding on the ground that a subsequent line in the state court's opinion should be presumed correct pursuant to § 2254(e)(1) would require this Court to extend the reach of that provision far beyond where it has ever gone before, and would result in the improper expansion of subsection (e)(1) into territory presently and properly reserved for § 2254(d). Petitioner provides no legal support for such a radical reading of the statute, and its first question presented does not warrant this Court's consideration.

II. PETITIONER'S SECOND QUESTION PRESENTED ALSO RESTS ON A FUNDAMENTALLY FLAWED PREMISE: THAT THE ARIZONA SUPREME COURT ELECTED TO GIVE "LITTLE WEIGHT" TO STYERS' PROFFERED MITIGATION.

It is axiomatic that a state court may not require a capital defendant to establish that his mitigation evidence has an explanatory nexus to the charged offense, as condition to the showing of the constitutional relevance of his proffered mitigation. This rule has been a bedrock principle of this Court's Eighth Amendment jurisprudence for nearly 30 years. *Eddings v. Oklahoma, supra*; *Smith v. Texas, supra*; *Tennard v. Dretke*, 542 U.S. 274, 283-285 (2004).

Prior to this Court's decisions in *Smith* and *Tennard*, the Arizona Supreme Court applied such an unconstitutional nexus-to-the-crime screening test for identifying certain categories of relevant mitigation evidence, and the Arizona Supreme Court employed this improper legal standard when it reviewed Styers' sentence. The plain language of the Arizona Supreme Court's decision is clear; it stated with respect to Styers' mental illness, that "[t]his could also, in an appropriate case, constitute mitigation . . . [h]owever two doctors who examined defendant could not connect defendant's condition to his behavior at the time of the murder." *State v. Styers*, 865 P.2d at 777. The Ninth Circuit properly recognized that in applying this type of nexus test to conclude that Styers' post-traumatic stress disorder did not qualify as mitigation, the state court imposed a test directly contrary to *Eddings v. Oklahoma, supra,* and *Smith v. Texas, supra*. See *Styers v. Schriro*, at 547 F.3d 1035. The Petitioner's objection to this correct result reached by the Ninth Circuit is threefold.

First, it suggests that the Arizona Supreme Court merely accorded little weight to Styers' proffered mitigation. No language in the state court decision supports this premise. Instead, the plain language of the decision itself demonstrates that the state court determined that in the absence of a nexus to the offense, evidence of Styers' mental infirmities could not be considered mitigation in the first instance. The court

decided that with respect to the evidence of Styers' post-traumatic stress disorder, "[t]his could also, in an appropriate case, constitute mitigation . . . [h]owever two doctors who examined defendant could not connect defendant's condition to his behavior at the time of the murder." *State v. Styers, supra.*

Second, the Petitioner argues that the state court could not have applied an unconstitutional test for identifying relevant mitigation, because such a test has never been part of Arizona's jurisprudence and state courts must be presumed to know and follow the law. This argument also easily fails. Contrary to the Petitioner's contention, there is Arizona Supreme Court authority directly on point holding that a defendant must demonstrate that evidence of his mental impairments has a causal nexus to the offense, and failing that, such evidence will not be deemed relevant mitigation, or eligible for inclusion in the weighing calculus. See *State v. Hoskins*, 14 P.3d 997, 1021-22 (Ariz. 2000) (remarking on whether evidence of a defendant's mental impairments or a history of family dysfunction could qualify as relevant mitigation, the Arizona Supreme Court stated that such evidence would be treated as irrelevant, unless a nexus to the offense was proven).

> [M]itigating circumstances must be "relevant in determining whether to impose a sentence less than death . . .." A.R.S. § 13-703(G). If the defendant fails to prove causation, the circumstance will not be considered mitigating. However, if the defendant proves the causal

> link [to the offense] the court then will determine what, if any, weight to accord the circumstance in mitigation.

State v. Hoskins, 14 P.3d 997, 1021-22 (Ariz. 2000).[6]

Third, based on the false premise that the Arizona court only made a weighting decision, the Petitioner argues that the Ninth Circuit wrongly extended *Eddings* and *Smith* to preclude a state court from gauging the weight to be afforded mental health mitigation based on whether it has a nexus to the crime. Once again the factual premise for the argument is erroneous. The Ninth Circuit decision expressly recognized that under *Eddings*, "the sentencer and the appellate court on review, may determine the weight given relevant mitigating evidence." *Styers v. Schriro*, at 547 F.3d 1035. Contrary to Petitioner's argument, the Ninth Circuit decision reflects a proper understanding and application of this Court's precedents.

Taken together, the petition's threefold argument in support of its second presented question would require the Court to engage in tortured readings of no less than three court decisions. First the Court would be required to ignore the plain language of the Arizona Supreme Court opinion in Styers' case, where that court

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[6]Styers agrees with the Petitioner, that after this Court decided *Tennard* and *Smith*, the Arizona Supreme Court appears to have withdrawn from its application of the unconstitutional nexus test. See *State v. Pandelli*, 161 P.3d 557, 575 (Ariz. 2007) (the absence of evidence that mitigation has explanatory nexus to the offense would be applied to the consideration of the strength of the mitigation).

clearly held that evidence related to Styers' post-traumatic stress disorder would not qualify as mitigation in his case because it lacked a nexus to the offense. *State v. Styers, supra*, ("[t]his could also, in an appropriate case, constitute mitigation . . . [h]owever two doctors who examined defendant could not connect defendant's condition to his behavior at the time of the murder"). Second, the Court would have to ignore, or engage in a tortured reading of the decision in *State v. Hoskins*, which also clearly held that lacking a nexus to the offense, evidence of a defendant's traumatic childhood or mental health disabilities would not qualify as relevant mitigation, or be eligible for inclusion in the weighing calculus. Third, the Court would need to construe the Ninth Circuit decision as extending *Eddings* and *Smith* beyond their established parameters, despite the fact that the Ninth Circuit decision expressly indicated that it was not doing so.

Recognizing the frailties in its position, the Petitioner suggests that a question be certified to the Arizona Supreme Court "if this Court believes that the Arizona Supreme Court did not even 'consider' the evidence of Styers' post-traumatic stress disorder." (Petition at 23.) The request for certification is not appropriate. If as the Petitioner has stated, "this Court believes that the Arizona Supreme Court did not even 'consider' the evidence of Styers' post-traumatic stress disorder," the proper response would be to deny the petition and allow the Ninth Circuit decision to stand.

See *City of Houston, Tex. v. Hill*, 482 U.S. 451, 471 (1987) ("[i]t would be manifestly inappropriate to certify a question in a case where, as here, there is no uncertain question of state law whose resolution might affect the pending federal claim"); *Tarr v. Manchester Ins. Corp.*, 544 F.2d 14, 15 (1st Cir.1976) ("[t]he purpose of certification is to ascertain what the state law is, not, when the state court has already said what it is, to afford a party an opportunity to persuade the court to say something else.").

Relying on the plain language of the state court decision, the Ninth Circuit decision correctly determined that the Arizona Supreme Court's application of a nexus test for identifying, and thus excluding relevant mental health mitigation, resulted in a decision that was contrary to this Court's decision in *Eddings v. Oklahoma*. Application of such a nexus test represents a clear departure from this Court's established precedents, qualifying Styers for habeas relief under 28 U.S.C. § 2254(d)(1).

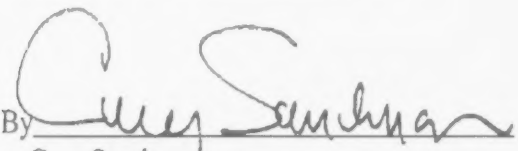
Rule 10 of the Supreme Court states that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." There is no issue of importance in this case and the Petitioner seeks nothing more than correction of what it perceives to be an error.

CONCLUSION

The court of appeals correctly decided Styers' federal claim. The petition for certiorari fails to demonstrate any legitimate questions for this Court's review and should be denied.

Dated this 24th day of June, 2009.

WATERFALL, ECONOMIDIS, CALDWELL,
HANSHAW & VILLAMANA, P.C.



By _____
Cary Sandman
Attorney for Respondent